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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,714	12/14/2001	Cheryl J. Kaminsky	83744AEK	9586

7590

07/14/2005

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EXAMINER
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CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/020,714

Applicant(s)

KAMINSKY ET AL.

Examiner

Victor S. Chang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,6-12,15,17,18,20-22,26,28 and 29.  
Claim(s) withdrawn from consideration: 19,23-25,27 and 30-32.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached NOTE.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

**NOTE**

1. Applicants' amendment to claim 1 has been entered, so as to place the Application in better form for appeal by materially reducing or simplifying the issues for appeal. It is noted that the amendment expressly recites the formula for average weight balanced color temperature variation  $\Delta T$ .

2. With respect to Applicants' argument "The main claim is ... amended to clarify that the ... microvoid parameters are selected to achieve the desired functional result. This limitation is consistent with the data and insures that the claim does not cover a voided film that might be within the microvoid parameters but does not exhibit the advantage of the invention ... Nowhere in Allen or his examples does the inventor actually describe such microvoid parameters nor does he describe such microvoid for any specific voided film ... the films of comparative Samples 1, 2, 4, and 5 are as much within the teachings of Allen as is Sample 3. Yet, these comparative samples do not exhibit the advantage ... there is no anticipation" (Remarks, pages 7-8), the Examiner repeats (Office action dated 1/6/2005, page 4) that Allen's invention is directed to the same subject matter as the instant invention, i.e., a polymeric optical film which comprises a disperse phase of polymeric particles disposed within a continuous matrix, and Allen expressly teaches that the size and shape of the disperse phase particles, and the volume fraction of the disperse phase and the film thickness are chosen to attain a desired degree of diffuse reflection and total transmission of electromagnetic radiation of a desired wavelength in the resulting film (abstract); further, Allen also

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teaches that the films exhibit a flat transmission curve as a function of the wavelength of light, which tends to minimize any changes (variation) in color to a resultant display device (column 5, lines 30-34), and in one embodiment, Allen teaches that it is desirable to promote lower off-angle color (column 23, lines 1-2). As such, since Allen teaches the inventive concept in a general way and establishes the parameters one skilled in the art would manipulate to control the claimed features, and the general conditions of practicing Applicants' invention is known to the art, it is the Examiner's position that determining the workable ranges is obvious absent a showing of unexpected results.

Applicants' argument "There is no obviousness from the teachings of Allen since Allen is silent on the property of "color temperature differential" ... the conventional measurement of percent transmission by wavelength is carried out only in the direction normal to the film and is totally unrelated to the color at various exit angle to the film normal ... the Patentee's statement is focused on the essential features of his invention which is a dispersion of solid particles in an immiscible continuous phase; microvoids are only mentioned as a generally undesirable possibility, and they are not the focus of the Patentee's statement" (Remarks, page 8, bottom paragraph) has been carefully considered, but is not persuasive. First, the Examiner repeats that in addition to Allen's teaching that the films exhibit a flat transmission curve as a function of the wavelength of light, which tends to minimize any changes (variation) in color to a resultant display device (column 5, lines 30-34), in one embodiment Allen also teaches that it is desirable to promote lower off-angle color (column 23, lines 1-2). Second, The Examiner reminds Applicants that Allen's teaching of microvoids formed by void initiator of solid particles

reads on the microvoid of instant invention, which are also formed by using solid particles (specification, page 7, lines 10-15), Applicants' argument to the contrary notwithstanding.

Finally, with respect to Applicants' argument "the data referred to by Allen is conventionally focused only on the light passing normal to the film ... this has nothing whatsoever to do with the off-normal viewing angle which is the subject matter of the present invention" (Remarks, page 8, bottom paragraph), the Examiner again repeats that in one embodiment Allen also teaches that it is desirable to promote lower off-angle color (column 23, lines 1-2), Applicants' argument to the contrary notwithstanding.

**3.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*VSC*  
Victor S Chang  
Examiner  
Art Unit 1771

7/6/2005

  
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